

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

EVAN JAMES QUNELL,

Defendant/Movant.

CR 07-03-GF-BMM
CV 16-62-GF-BMM

**ORDER DENYING § 2255
MOTION AND DENYING
CERTIFICATE OF
APPEALABILITY**

This matter comes before the Court on Defendant/Movant Qunell's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The defendant is a federal prisoner represented by Assistant Federal Defender David Ness. He seeks relief under *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), against his designation as a career offender, *see* U.S.S.G. § 4B1.1.

The Court granted Qunell's motion to defer ruling on his § 2255 motion for 14 days on March 15, 2017. Order (Doc. 388). Despite the deferral, Qunell did not timely file anything.

Qunell's § 2255 motion appears to lack merit. *Johnson* announced a new rule that is retroactive to cases, like Qunell's, on collateral review. *See Welch v. United States*, __ U.S. __, 136 S. Ct. 1257 (2016). The Supreme Court now has held that provisions of the advisory sentencing guidelines are not subject to constitutional challenges on grounds of vagueness. *See Beckles v. United States*,

— U.S. —, 137 S. Ct. 886, 890 (2017). The reasoning of *Johnson* cannot support relief for Qunell under § 2255.

A certificate of appealability is not warranted as Qunell has failed to make a substantial showing that he was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED:

1. Qunell's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 382) is DENIED.
2. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Qunell files a Notice of Appeal;
3. The clerk shall ensure that all pending motions in this case and in CV 16-62-GF-BMM are terminated and shall close the civil file by entering judgment in favor of the United States and against Qunell.

DATED this 12th day of October, 2017.



Brian Morris
United States District Court Judge